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UNITED STATES BANKRUPTCY COURT

DISTRICT OF NEVADA

In re

DOUBLE U LIVESTOCK, LLC

Debtor.

Case No. BK-N-11-52345-BTB

Chapter 12

**PETER AND RAMA PARIS FAMILY
TRUST RESPONSE TO DEBTOR'S
REPLY IN SUPPORT OF
APPLICATION TO EMPLOY ROBERT
FLETCHER [Docket No. 39]**

Hearing Date: October 26, 2011

Hearing Time: 10:00 a.m.

TO THE HONORABLE UNITED STATES BANKRUPTCY JUDGE:

The PETER AND RAMA PARIS FAMILY TRUST (THE "TRUST"), by and through their attorneys of record, KAARAN E. THOMAS and LEO P. BERGIN, of the law firm of McDONALD CARANO WILSON, LLP file this Response to the Reply In Support of Debtor's Application to Employ Robert R. Fletcher ("Fletcher") as Chapter 12 Plan Consultant (the "Reply") and for cause would show:

BACKGROUND INFORMATION

1. The Trust, a secured creditor of the Debtor, has objected to Debtor's Application to Employ Fletcher because Fletcher has a conflict of interest arising from his previous representation of Debtors' principals, James and Carlene West ("West") and their ranch (the "Sweetwater Ranch"). The Trust urges that this previous representation creates an actual conflict

1 of interest because Debtor is involved in various business arrangements with the Sweetwater
2 Ranch which Fletcher cannot evaluate objectively due to his employment by, and connection
3 with, the Wests.

4 2. Debtor has now filed a reply which reaffirms the Trust's concerns and
5 demonstrates Fletcher's adverse interest. On page 2 of the Reply (lines 4-16) Debtor's principal
6 concludes that "both ranches [Debtor and Sweetwater] must operate in order for either to
7 survive"). In other words, the survival of Fletcher's original clients, West and Sweetwater,
8 depends upon a recommendation from Fletcher's that his new client, the Debtor (a) must survive
9 and (b) must continue its "joint venture relationship" with his original client. His original client
10 has not yet paid his fee.

11 3. The explicit language of 11 U.S.C. § 327(a) imposes two conditions on the
12 employment of a "professional person" by the estate: (1) the professional may not hold or
13 represent an interest adverse to the estate; and (2) the professional must be disinterested. In re
14 Eagle-Picher Industries, Inc., 999 F.2d 969, 971 (6th Cir.1993). A professional who, at any time,
15 fails to meet these requirements is subject to having both compensation for services and
16 reimbursement of expenses denied pursuant to 11 U.S.C. § 328(c). Mr. Fletcher has not indicated
17 he is willing to serve without compensation. Even if he were, his employment would be more
18 suspect, based upon the likelihood that he was being compensated by his original clients.

19 4. The Reply contains other disconcerting information. It says that Mr. Fletcher was
20 working as a "ranch consultant" for the Debtor "prior to Double U filing bankruptcy." [Reply page
21 4 line 27-page 5 line 1]. Mr. Fletcher's declaration filed in the West Chapter 12 case [Case no.
22 10-54234 Doc. no. 59] states under oath that Mr. Fletcher represents no interest adverse to the
23 Debtors or their estate. Mr. Fletcher did not disclose his employment by Double U, an affiliate of
24 the Debtor. His representation should clearly have been disclosed, given that he prepared the
25 report in support of the West's Second Amended Plan, recommending the economic feasibility of
26 the financial arrangements between Double U and West. [Case no. 10-54234 Doc. no. 82-1].

27 5. Debtor argues that Mr. Fletcher should not be disqualified because he is "not a
28 creditor". This is not the test. Debtor urges that Mr. Fletcher does not have a "materially

adverse interest” to the estate, analogizing this case to the BH&P, Inc. case¹. BH&P involved hiring the same professional in related cases that were jointly administered. Debtor’s case is not jointly administered with the West Chapter 12. The estate is entitled to an independent analysis of Double U’s business and its prospects. That is the job of a professional person.

6. An “adverse interest” as used in § 330(a), has been defined as: (1) to possess or assert any economic interest that would tend to lessen the value of the bankruptcy estate or that would create either an actual or potential dispute in which the estate is a rival claimant, or (2) to possess a predisposition under circumstances that render such a bias against the estate. Kravit, Gass & Weber, S.C. v. Michel (In re Crivello), 134 F.3d 831, 835 (7th Cir.1998). The conclusions on page 2 of the Reply, stated above, could hardly be a more clear indication of a predisposition on the part of Mr. Fletcher.

7. Finally, Debtor argues that Mr. Fletcher is not a “professional person”. It is difficult to imagine how this could be the case, since it is his report that provides the support for Debtor’s plan of reorganization. According to his employment application, Mr. Fletcher will be “proposing plan terms and assisting parties in reaching agreement concerning the terms of Debtor’s plan of reorganization.” Mr. Fletcher should not be in charge of proposing or negotiating plan terms in light of his affiliation with the Wests.

Wherefore, the PETER AND RAMA PARIS FAMILY TRUST pray that Debtor’s Application be denied.

Dated: October 19, 2011

Respectfully submitted,
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¹ In re BH&P Inc., 949 F.2d 1315 93rd Cir. 1991). Holding that the existence of interdebtor claims in jointly administered estates did not mandate disqualification of trustee in every instance. The Court recommended a case by case analysis to determine the existence and extent of actual conflicts.